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(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences; and

(3) Owner reexamination of family income and composition;

(d) Determining adjusted income, as provided in § 5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these programs; and

(e) Determining earned income disregard for persons with disabilities, as provided in § 5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583);

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and the Housing Choice Voucher Program (24 CFR part 982).

[66 FR 6222, Jan. 19, 2001]

§ 5.603 Definitions.

As used in this subpart:

(a) *Terms found elsewhere in part 5—(1) Subpart A.* The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency (PHA)*, *responsible entity* and *Section 8* are defined in § 5.100.

(2) *Subpart D.* The terms “disabled family”, “elderly family”, “family”, “live-in aide”, and “person with disabilities” are defined in § 5.403.

(b) The following terms shall have the meanings set forth below:

Adjusted income. See § 5.611.

Annual income. See § 5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Economic self-sufficiency program. Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for

job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Extremely low income family. A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Full-time student. A person who is attending school or vocational training on a full-time basis.

Imputed welfare income. See § 5.615.

Low income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or house-

hold, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under § 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under § 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term "owner" shall also include a "borrower" as defined in part 891 of this title.

Responsible entity. For § 5.611, in addition to the definition of "responsible entity" in § 5.100, and for § 5.617, in addition to only that part of the definition of "responsible entity" in § 5.100 which addresses the Section 8 program covered by § 5.617 (public housing is not covered by § 5.617), "responsible entity" means:

(1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

(2) For the Rent Supplement Payments Program, the owner of the multifamily project;

(3) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(4) For the Housing Opportunities for Persons with AIDS (HOPWA) program,

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the applicable “State” or “unit of general local government” or “nonprofit organization” as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;

(5) For the Shelter Plus Care Program, the “Recipient” as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the “recipient” as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the “Owner” as defined in 24 CFR 891.205;

(8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the “Borrower” as defined in 24 CFR 891.505; and

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the “owner” as defined in 24 CFR 891.305.

Tenant rent. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

Total tenant payment. See § 5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family. A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such

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variations are necessary because of unusually high or low family incomes.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

Work activities. See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 6223, Jan. 19, 2001; 67 FR 47432, July 18, 2002]

FAMILY INCOME

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue